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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

ARMANDO MOLINA,

Defendant and Appellant.

2d Crim. No. B207202  
(Super. Ct. No. 2007036113)  
(Ventura County)

Armando Molina appeals the judgment entered after a jury convicted him of making criminal threats (Pen. Code, § 422),<sup>1</sup> resisting or deterring an executive officer (§ 69), misdemeanor vandalism (§ 594, subd. (b)(2)(A)), and possession of marijuana (Health & Saf. Code, § 11357, subd. (b)). The jury also found true allegations that the criminal threat and resisting or deterring offenses were committed for the benefit of, at the direction of, or in association with a criminal street gang (§ 186.22, subds. (b)(1)(A) & (b)(1)(B)). The trial court sentenced him to eight years eight months in state prison. He contends the evidence is insufficient to support the gang enhancements, and that he was subjected to multiple punishments in violation of section 654. We affirm.

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<sup>1</sup> All further undesignated statutory references are to the Penal Code.

## STATEMENT OF FACTS

At about 11:00 p.m. on September 20, 2007, Port Hueneme Police Officer Shane Norwood responded to a report of an armed vehicle theft outside a bank. Appellant and his brother Lucio were found sitting in the passenger seats of the allegedly stolen vehicle. Both men and the driver were removed from the vehicle and subjected to patdown searches. All three men were released after the owner of the vehicle arrived and identified the driver as her boyfriend.

Officer Norwood recognized appellant and Lucio from prior contacts and knew them to be members of the Sur Town gang. Both men, who appeared to be intoxicated, walked to a supermarket in the same shopping center. Appellant went in the store while Lucio stayed outside talking on a cell phone.

Officer Norwood noticed that a female cashier was working by herself inside the store. The officer was concerned that appellant and Lucio were intending to shoplift or commit another crime, so he entered the store and stood at the front checkout lanes. As appellant exited an aisle, the officer saw him shuffling something in his pockets as if he were trying to hide something. When the officer asked appellant to approach him, appellant asked, "What the fuck to you want, Norwood?" Appellant also said, "You always have a problem with me" and asked why the officer was "always fucking" with him.

As appellant walked toward Officer Norwood, he continued to shuffle his hands in his pockets. After appellant complied with the officer's request to remove his hands from his pockets, the officer asked if he could "see if he had anything on him." Appellant replied, "Go ahead, mother fucker," then turned around, spread his legs, and put his hands behind his head. The officer searched appellant and found a plastic baggie containing 2.52 grams of marijuana.

Officer Norwood wanted to remove appellant from the store and issue him a citation. As appellant was about to be handcuffed, he stiffened his body and moved backward, clenched his fist, and became verbally abusive. When the officer put appellant

in a rear wrist lock, the two of them spun around, landed against a cigarette display, and knocked part of a computer system to the ground. The officer eventually succeeded in handcuffing appellant, who continued to push backward and tried to turn around as he shouted profanities at the officer.<sup>2</sup> During the altercation, Lucio stood nearby and yelled about "police brutality." As they were exiting the store, Officer Norwood saw two other police units arriving and put appellant over the trunk of his patrol car. When appellant continued resisting, the officer hit him in the kidney with a "closed-fist distraction strike." Appellant was eventually placed in the back seat of the patrol car with the assistance of two other officers.

As Officer Norwood drove appellant to the Port Hueneme police station for booking, appellant continued his verbal abuse. Appellant told the officer he "fucking hated" him and that he was going to "kick [his] ass" as soon as his handcuffs were off. When they arrived at the station, appellant refused to get out of the car. Appellant finally got out, yet continued resisting and being verbally abusive. Once inside the station, appellant refused to calm down or comply and was placed in a holding cell with his handcuffs on. After about 15 minutes in the cell, appellant began kicking the steel door and dented it.

Appellant was transported to Ventura County jail for booking. As Officer Norwood drove appellant to the jail, appellant repeatedly threatened the officer and his family. Appellant said, "I am Sur Town, mother fucker, and I am going to fuck you up. Mother fucker, I hate you. I am going to fucking kill you when I get out of here." When Officer Norwood told appellant he would use lethal force if necessary to protect himself and his family, appellant replied, "I don't give a fuck. Do you think I roll around empty? I will fucking kill you and your family. I don't give a fuck. Fuck your family."<sup>3</sup>

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<sup>2</sup> The entire incident was captured on surveillance cameras and played for the jury.

<sup>3</sup> Officer Norwood understood the phrase, "Do you think I roll around empty?" to mean that appellant would not be in public without a loaded firearm.

Appellant knew Officer Norwood had a five-year-old son and said, "I'll fuck him up, too." Appellant told the officer he knew where he lived and told him that he "better watch [his] back because [he] was going to get fucked up." Appellant also claimed that "Sur Town knows where the Port Hueneme police all live." Officer Norwood took appellant's threats seriously and feared for his and his family's safety.

When they arrived at the county jail, appellant again said, "I am going to fuck you up." Appellant got out of the car and faced Norwood as if he were challenging him. As the officer walked appellant toward the entrance, appellant threw himself on the ground and claimed that his wrist was broken. Appellant was eventually booked and placed in a "sobering cell."

Oxnard Police Officer Frank Brisslinger testified as a gang expert on behalf of the prosecution. Officer Brisslinger testified that the Sur Town Chiques gang has approximately 75 to 85 members who gain respect within the gang by committing crimes. Assaulting or threatening an officer garners a high degree of respect, surpassed only by murder or attempted murder. Appellant and Lucio are both members of the Sur Town Chiques. Appellant has gang tattoos on his body, including one that says "Sur Town" on his arm and two on his shins with the initials "STCH," which stands for Sur Town Chiques. Appellant had also admitted his membership in the gang.

Officer Brisslinger opined that appellant had committed the charged crimes for the benefit of his gang. The officer based his opinion on appellant's confrontational behavior and the fact that he had referred to his gang in threatening Officer Norwood and his family.

Appellant testified on his own behalf. He denied he was intoxicated when the incident occurred and claimed he had gone into the market to use the restroom and get something to eat. As he was looking for food, Officer Norwood asked him what he was doing. Appellant reached in his pocket to retrieve his cell phone in order to call someone for a ride, which prompted the officer to ask him what he had in his pocket. Appellant believed he was being accused of shoplifting, so he raised his hands and said, "Look, I

don't got nothing." He acknowledged approaching the officer and asking him why he was "always fucking" with him, yet denied giving the officer consent to search him. Appellant complied only after the officer reached for his Taser and threatened to use it on him. He denied resisting arrest, and claimed that Officer Norwood had jerked him and laid him on the trunk of his patrol car "for no reason." He also claimed that Officer Norwood had punched him in the kidney after he asked him to "[e]xplain to me what is going on." Appellant denied making any threats against the officer, although he admitted using profanity. He also admitted being a past gang member, yet claimed he was no longer affiliated with any gang.

Lucio testified that he was in the market when Officer Norwood arrested appellant and had overheard the officer say, "I hope you resist arrest. I hope you move so I can Tase you." Lucio claimed that he never saw appellant use any force against Officer Norwood, and that Officer Norwood had thrown appellant against the cigarette machine and slammed him onto the trunk of his patrol car. Lucio admitted being a member of the Sur Town Chiques gang.

## DISCUSSION

### I.

#### *Sufficiency of the Evidence—Section 186.22, Subdivision (b)(1)*

Appellant contends the evidence is insufficient to prove that the criminal threat and resisting or deterring an executive officer offenses were committed for the benefit of, at the direction of, or in association with his gang, the Sur Town Chiques, as contemplated by section 186.22, subdivision (b). We disagree.

""When the sufficiency of the evidence is challenged on appeal, the court must review the whole record in the light most favorable to the judgment to determine whether it contains substantial evidence-i.e., evidence that is credible and of solid value-from which a rational trier of fact could have found the defendant guilty beyond a reasonable doubt." [Citations.] [Citation.] We resolve all conflicts in favor of the judgment and indulge all reasonable inferences from the evidence in support of the

judgment. [Citation.] This standard applies to . . . gang enhancement findings [citation]." (*People v. Villalobos* (2006) 145 Cal.App.4th 310, 321-322.) "In order to prove the elements of the criminal street gang enhancement, the prosecution may, as in this case, present expert testimony on criminal street gangs. [Citation.]" (*People v. Hernandez* (2004) 33 Cal.4th 1040, 1047-1048.)

Substantial evidence supports the jury's finding that appellant resisted or deterred Officer Norwood and made criminal threats against him and his family for the benefit of the Sur Town Chiques gang. Officer Brisslinger, the prosecution's gang expert, opined that the crimes were committed for the benefit of appellant's gang because the threatening statements upon which the charges were based were accompanied by express references to the Sur Town Chiques.<sup>4</sup> Officer Brisslinger explained that appellant's gang references had the effect of "not only raising his status within the gang, but raising the Sur Town Chiques['] status within the community [by] establishing them as a reckoning force due to the fact they have a member here who is willing to threaten a cop and take out his family . . . ." This expert testimony, coupled with the facts upon which it is based, is sufficient to prove that appellant committed both crimes in order to benefit the Sur Town Chiques. (*People v. Gardeley* (1996) 14 Cal.4th 605, 619.)<sup>5</sup>

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<sup>4</sup> As appellant correctly notes, the jury was properly instructed that he could be found guilty of resisting or deterring Officer Norwood in violation of section 69 based on his conduct prior to his arrest or the threats of violence that came after he was placed in the patrol car. He also correctly notes that neither party requested a special verdict indicating the specific acts or statements upon which the jury's finding was based, although the jury was instructed it had to agree which act or statement amounted to a violation of the statute. Viewing the record in the light most favorable to the judgment, we presume the jury's verdict on section 69 was based at least in part on appellant's threats of violence.

<sup>5</sup> In light of our conclusion that appellant interfered with Officer Norwood's duties and made criminal threats against him for the benefit of his gang, we need not address appellant's contention that the evidence is insufficient to support a finding that his crimes were committed "in association with" his gang, as contemplated by section 186.22, subdivision (b)(1).

Appellant's claim that his crimes were motivated solely by a "personal" dispute in that he was "angry at [Officer] Norwood for what he considered to be police harassment" fails to account for the deferential standard of review that compels us to indulge all reasonable inferences from the evidence in favor of the jury's finding that the crimes were committed for the benefit of his gang. (*People v. Villalobos*, *supra*, 145 Cal.App.4th at pp. 321-322.) Appellant's attempt to characterize Officer Brisslinger's expert testimony as overly broad and his claim that his repeated gang references were mere "posturing" are similarly infirm. Tellingly, appellant's arguments in this regard make no mention of his threats to kill Officer Norwood and his family, much less that those threats were replete with references to his gang. This evidence is sufficient by itself to support the finding that the crimes were committed for the benefit of appellant's gang, as contemplated by section 186.22, subdivision (b)(1).

## II.

### *Section 654*

Appellant contends the trial court violated section 654 by ordering his sentence on count 2 (resisting or deterring an executive officer) to run consecutive to his sentence on count 1 (making a criminal threat) because the offenses arose from the same acts and were incident to a single objective. We conclude that appellant was properly sentenced on both counts.

Section 654, subdivision (a), provides in pertinent part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision. . . ." The purpose of the statute "is to prevent multiple punishment for a single act or omission, even though that act or omission violates more than one statute and thus constitutes more than one crime. Although the distinct crimes may be charged in separate counts and may result in multiple verdicts of guilt, the trial court may impose sentence for only one offense . . . ." (*People v. Liu* (1996) 46 Cal.App.4th 1119, 1134.)

Multiple punishment is proper only if the evidence demonstrates that the defendant harbored multiple criminal objectives that were independent of each other in committing the offenses. (*People v. Mendoza* (1997) 59 Cal.App.4th 1333, 1345.)

"Whether section 654 applies in a given case is a question of fact for the trial court, which is vested with broad latitude in making its determination. [Citations.] Its findings will not be reversed on appeal if there is any substantial evidence to support them. [Citations.]" (*People v. Jones* (2002) 103 Cal.App.4th 1139, 1143.) We review the court's ruling in the light most favorable to the judgment, and presume the existence of every fact the court could reasonably deduce from the evidence. (*Ibid.*)

"The test for determining whether section 654 prohibits multiple punishment has long been established: 'Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. . . .' [Citation.]" (*People v. Britt* (2004) 32 Cal.4th 944, 951-952.) "[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once. [Citation.] ¶¶ If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' " (*People v. Harrison* (1989) 48 Cal.3d 321, 335.)

Appellant's claim that his sentence on count 2 should have been stayed is premised on the unfounded assumption that the jury based the conviction solely on the verbal threats he made to Officer Norwood. Section 69 does not merely proscribe attempts to deter or prevent an officer from lawfully performing duties by means of threat or violence. It also punishes those who knowingly *resist* an officer's attempt to carry out his lawful duties. (§ 69.) While the verdict does not reflect the theory upon which the jury found appellant guilty of violating section 69, the evidence, viewed in the light most

favorable to the judgment, is sufficient to sustain the finding that appellant was guilty of resisting Officer Norwood under section 69 before he made any threats against the officer or his family. That conduct was divisible from the threats appellant subsequently leveled against the officer and his family. Moreover, appellant's objective in resisting Officer Norwood was to evade arrest, while his objective in making criminal threats was to place the officer in fear. Because these objectives were wholly independent of each other, separate punishment on each count was not prohibited under section 654.

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

Steven Hintz, Judge  
Superior Court County of Ventura

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